

CITY OF EVERETT

GUIDE TO LAND USE HEARINGS

IN THIS GUIDE:

- LAND USE HEARING PROCESS
- HOW TO PARTICIPATE IN A LAND USE HEARING
- WHAT TO EXPECT
- APPEALS
- IMPORTANT CONSIDERATIONS

LAND USE HEARING PROCESS

The following information explains the role of the Land Use Hearing Examiner and how to participate in hearings. This is not a complete description of the rules and laws governing the hearing process, but rather an overview to prepare Applicants, Appellants, and members of the public for participation in public proceedings. Information about the Hearing Examiner and the hearing process can be found in in Everett Municipal Code Chapters [2.23](#) and [15.02.200](#), other portions of the City Code, and in the Hearing Examiner Rules of Procedure. Copies of the relevant codes and the hearing examiner rules are available from the City of Everett Community, Planning and Economic Development. You can also find the City code online at [MRSC.org](#) (see Washington City Codes).

City ordinances authorize the Hearing Examiner to conduct hearings on land use permit applications and appeals of certain City administrative decisions. The City of Everett contracts with an independent Hearing Examiner, who is not a City employee. The neutrality of the Examiner helps to ensure fairness and due process protection for everyone involved.

HOW TO PARTICIPATE IN A LAND USE HEARING

After project notice to parties, as required by ordinance, the Hearing Examiner conducts a public hearing. Each land use hearing is recorded in order to establish a verbatim record of testimony and procedural issues as they occur.

All testimony is given under oath to tell the truth. Those who testify must identify themselves for the record. The Hearing Examiner may establish time limits for testimony.

Applicants, City departments, other public agencies, and all persons interested in a land use application may participate at the hearing through the submittal of relevant testimony and documents.

In applications for land use permits, the Applicant has the burden of proof, and in appeals, the Appellant has the burden of proof. The party with the burden of proof is the one responsible for providing evidence demonstrating that their position is correct. In the case of an application, an Applicant must show that the project requested meets applicable criteria for approval and relevant development standards. In the case of an appeal, the Appellant must show that the City's administrative decision is inconsistent with applicable City codes.

At the end of each hearing, the Examiner will close the record in the matter and announce the decision due date. At the Examiner's discretion, the record may be left open for submission of necessary relevant information not available at the hearing. Generally, no new evidence can be submitted after the close of the record, even on appeal from the Hearing Examiner decision, so it is important that all relevant information be provided prior to the close of the record.

No decision is announced at the hearing. The Hearing Examiner takes the case under advisement and issues a written decision including findings of fact and conclusions of law. The Examiner's decision on a permit application will determine whether the development proposed has been shown to meet all requirements of the applicable City codes and State law. If yes, the permit is granted. In the case of appeals, the Examiner's decision will determine whether the City administrative determination under appeal does or does not conform to applicable City code requirements. If it does, the appeal will be denied.

HOW TO PARTICIPATE IN A LAND USE HEARING (cont'd)

The decision is mailed to those who request it. Usually, the date of issuance is ten business days after close of the record. In appeals or complex cases, the decision issuance deadline may be extended.

WHAT TO EXPECT AT THE HEARING

The Hearing Examiner's duties include:

- To establish the order of the day's docket and presentation of testimony for each matter;
- To accept relevant documentary and testimonial evidence;
- To determine whether the application satisfies criteria for approval;
- To proceed in an expeditious manner and keep order.

Permit application land use hearings will usually proceed in the following order:

- Presentation of the project by the Applicant or the Applicant's authorized representative;
- Presentation of City Staff's analysis of the project's compliance with code requirements;
- Public comment, including testimony in favor or against the project, and questions;
- Responses to questions by Staff and Applicants;
- Final statement from Applicant who has the burden of proof.

Appeal hearings will usually proceed in the following order:

- Description of the City decision appealed made by City Staff to provide context;
- Presentation of the appeal by the Appellant or authorized representative, including witnesses;
- Presentation by the City or authorized representative, including witnesses;
- Presentation by the Applicant (if different from Appellant) or authorized representative, including witnesses;
- Final statement from Appellant who has the burden of proof.

IMPORTANT CONSIDERATIONS

- Land use hearings before the Land Use Hearing Examiner are quasi-judicial proceedings, which means not only must they be fair, they must appear to be fair. Accordingly, the Hearing Examiner may not participate in any hearing in which he/she has financial or personal interest. Any person who has reason to believe the Hearing Examiner may be influenced by a consideration outside the public record should bring that concern to the attention of the Hearing Examiner prior to or at the hearing.
- To be admitted in the record, written testimony must be submitted before the close of the public hearing. Written testimony should be addressed to the Land Use Hearing Examiner and should be clearly legible. The writer should give his/her full address in order to receive a copy of the decision.
- Written comments and public testimony addressing how a project does or does not comply with the permit's criteria for approval or other applicable development standards have the most effect on the outcome of the hearing,
- **The Land Use Hearing Examiner must not be contacted directly about specific matters but can be submitted to the Hearing Examiner's Office or at the hearing.** To ensure that the Examiner will remain free from bias in the decision making process, any contact with the Examiner must be through testimony or written statements submitted at the hearing, or through material submitted to the Hearing Examiner's Office. Material not submitted in an appropriate manner will not be included in the record.

HOW TO FILE AN APPEAL FROM A HEARING EXAMINER DECISION

The Hearing Examiner's decision contains information on the deadlines and methods of appeal for each decision. Any appeal or request for reconsideration *must* be filed within the specified time limit to be considered. Usually, new information cannot be raised on appeal. All relevant information and arguments should be presented at the public hearing before the Hearing Examiner.